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HOUSE BILL 148

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Donald L. Whitaker

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

**RELATING TO TAXATION; AMENDING THE INCOME TAX ACT TO PROVIDE A
PHASED-IN DEDUCTION FOR NET CAPITAL GAIN ATTRIBUTABLE TO SALE
OF A CLOSELY HELD TRADE OR BUSINESS.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act, Section
7-2-36 NMSA 1978, is enacted to read:

"7-2-36. [NEW MATERIAL] DEDUCTION--NET CAPITAL GAIN
INCOME FROM SALE OF A CLOSELY HELD TRADE OR BUSINESS.--

A. Except as provided in Subsection B of this
section, a taxpayer may claim a deduction from net income in an
amount equal to the applicable percentage of the taxpayer's net
capital gain from the sale of a closely held trade or business
in the taxable year for which the deduction is being claimed if
and to the extent the net capital gain is included in the

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1 taxpayer's base income. A husband and wife who file separate
2 returns for a taxable year in which they could have filed a
3 joint return may each claim only one-half of the deduction
4 provided in this section that would have been allowed on the
5 joint return.

6 B. A taxpayer may not claim the deduction provided
7 in Subsection A of this section:

8 (1) if the taxpayer has claimed the credit
9 provided in Section 7-2D-8.1 NMSA 1978; or

10 (2) to the extent the taxpayer has claimed a
11 deduction for a net capital gain under Section 7-2-34 NMSA
12 1978.

13 C. As used in this section:

14 (1) "applicable percentage" means:

15 (a) for a sale of a closely held trade
16 or business occurring in a taxable year beginning in the 2003
17 calendar year, fifty percent;

18 (b) for a sale of a closely held trade
19 or business occurring in a taxable year beginning in the 2004
20 calendar year, seventy-five percent; and

21 (c) for a sale of a closely held trade
22 or business occurring in a taxable year beginning after the
23 2005 calendar year, one hundred percent;

24 (2) "closely held trade or business" means a
25 trade or business operated:

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- 1 (a) as a sole proprietorship; or
2 (b) by a corporation, partnership,
3 limited partnership, limited liability company or other legal
4 entity, the equity interests of which are controlled by
5 seventy-five or fewer qualifying owners;

6 (3) "controlled" means holding equity
7 interests in at least eighty percent of the total combined
8 voting power of all classes of equity interests entitled to
9 vote and at least eighty percent of all other classes of equity
10 interests of the entity;

11 (4) "equity interest" means the equity
12 ownership of a legal entity, including:

13 (a) the capital stock of a corporation;

14 (b) the partnership interest of a
15 general or limited partner in a partnership; or

16 (c) the membership interest of a member
17 of a limited liability company;

18 (5) "net capital gain from the sale of a
19 closely held trade or business" means "net capital gain" as
20 defined in Section 1222 (11) of the federal Internal Revenue
21 Code to the extent attributable to:

22 (a) the sale or exchange of
23 substantially all of the property used in a closely held trade
24 or business; or

25 (b) the sale or exchange of the

1 taxpayer's entire interest in the equity interests of a closely
2 held trade or business, in a transaction in which substantially
3 all of the equity interests of the closely held trade or
4 business are sold or exchanged;

5 (6) "qualifying owner" means:

6 (a) a natural person;

7 (b) an estate; or

8 (c) a qualifying trust; and

9 (7) "qualifying trust" means:

10 (a) a trust, all of which is treated
11 under Subpart E of Subchapter J of the federal Internal Revenue
12 Code of 1986, as owned by an individual;

13 (b) a trust, described in Subparagraph
14 (a) of this paragraph, that is in existence immediately before
15 the death of the deemed owner and that continues in existence
16 after the deemed owner's death, but only for the two-year
17 period beginning on the date of the deemed owner's death;

18 (c) a trust with respect to equity
19 interests transferred to it pursuant to the terms of a will,
20 but only for the two-year period beginning on the day on which
21 such equity interests are transferred to it;

22 (d) a trust created under the Uniform
23 Transfers to Minors Act; or

24 (e) a trust created or organized for the
25 exclusive benefit of an individual or his beneficiaries under

1 Section 408 of the Internal Revenue Code.

2 D. For purposes of Subparagraph (a) of Paragraph
3 (6) of Subsection C of this section, a husband and wife shall
4 be treated as one qualifying owner. "

5 Section 2. APPLICABILITY. --The provisions of this act
6 apply to taxable years beginning on or after January 1, 2003.

7 Section 3. DELAYED REPEAL. --Section 1 of this act is
8 repealed effective January 1, 2011.

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